



Prepared for:

Regional Water Quality Control Board, Region 9

Summary Report Workshop, May 3, 2004

Clean-Up and Abatement Order (CAO) No. 92-01

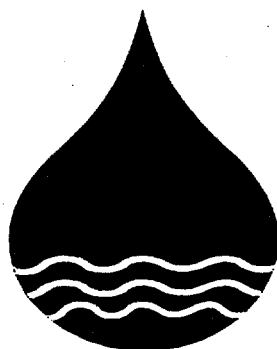
Time Schedule Order No. R9-2002-0042

City of San Diego

Proposed CAO

Concept Study-Groundwater Project

Comments On Summary Report





THE CITY OF SAN DIEGO

April 29, 2004

Mr. John Robertus
Executive Officer
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: Mission Valley Terminal, CAO 92-01, City of San Diego
Submittal for Public Workshop 5/3/04

Dear Mr. Robertus,

We appreciate our opportunity to participate in the upcoming workshop to review the status of this site and the adequacy of current Orders to Kinder Morgan Energy Partners, (Kinder Morgan) the dischargers. We think this workshop is appropriate and warranted. As the RWQCB knows from past submittals by the Working Group for the City of San Diego (see, *Statement of Regulatory Criteria*, dated January 4, 2004) the Mission Valley Terminal (MVT) release impacts significant public resources, including water resources and land resources, both of which are in short supply and held, in this instance, by the City for the benefit of its citizens.

As the Regional Board considers amending its current Order, we urge it to adopt requirements that are consistent with the public goals that were presented in the City's last submittal. The Order should require demonstrable results that achieve measurable success, in order that City plans for these resources can proceed. The City has already suffered economic consequences as a result of the discharger's releases at the MVT, and has been forced to retain experts and attorneys to help the City protect these valuable resources. Other non-governmental organizations and community groups are also committed to preservation of the Mission Valley environment and the San Diego River in particular, and these interests all share a common goal for an expeditious resolution to the contamination at this sensitive location.

We understood the purpose of the workshop is to allow Kinder Morgan, and its consultants, to present their findings and proposals to interested stakeholders and the



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public. We anticipate a discussion will follow to assist and inform the RWQCB as it considers amending its current Order. The City has two goals for this process. First, we want to share the most recent conceptual plans for the use of the aquifer in Mission Valley, so that realistic accommodation for the needed use of this resource can be achieved. Second, the City is concerned that the past submittals by the discharger have neither adequately described the current conditions at the site, nor evaluated the true range of options for its timely remediation. To make best use of our time at the workshop, we have charged our Working Group to review and comment on the proposals that have been submitted, and we have shared those written comments with the dischargers so that they can consider the issues and be prepared to discuss them. Those comments are attached.

First, we have proposed a Clean-up and Abatement Order (CAO) that, in our view, would appropriately require timely action so that the public use of these resources can proceed unimpeded. This document is attached as Exhibit "A" to this letter. Second, we have commissioned a study on the appropriate development of the Mission Valley aquifer by Dr. Michael Welch, which is attached as Exhibit "B" to this letter. We have also commissioned a review of the Levine Fricke Recon (LFR) work that Kinder Morgan submitted to describe the site and its condition. Dr. Richard Jackson, of Intera, undertook this study, and his findings are attached as Exhibit "C". Dr. Jay Jones of Environmental Navigation Services reviewed the work of LFR and Environ and tested some of the assumptions in the Human Health Risk Analysis that was submitted. His comments are attached as Exhibit "D". Drs. Welch, Jackson and Jones will be available to discuss their analyses and answer questions at the workshop. Representatives of the City's Working Group, including City staff from several departments as well as consultants and lawyers, will attend the workshop in the hope that they can assist, as needed, in providing information to the RWQCB so that the resulting amended Order is sufficient to the community's need.

To restate the City's goals as they were first articulated in the *Statement of Regulatory Criteria* submitted earlier (and again included in this submittal as Exhibit "E"), we offer the following comments and observations:

1. The City does not doubt that no one knows more than the Regional Board members and staff of the Board's responsibility to protect waters for beneficial uses. Protecting beneficial use of the states waters is the reason for the Board's existence.
2. All of the Board's water quality regulation is based on protecting beneficial uses.
3. The Board's Basin Plan identifies municipal water supply as a beneficial use for Mission Valley, and establishes groundwater quality objectives to protect these uses.
4. The State Water Resources Control Board (SWRCB) establishes municipal water supply as a high-priority beneficial use in SWRCB Resolution No. 88-63 - "Sources of Drinking Water Policy".

5. The MVT contamination is a violation of the Basin Plan, a violation of Proposition 65, and is inconsistent with beneficial use of the state's waters. It has caused damage to an important public resource and should be remediated aggressively.
6. The MVT contamination can reasonably be treated, and the contamination does not fall into any of the "exceptions" categories established in SWRCB Resolution No. 88-63.
7. As a result, the Regional Board is bound per the Basin Plan and SRWCB Resolution No. 88-63 to protect Mission Valley groundwater as a source of municipal supply.
8. The City supports Regional Board actions to correct the violations and restore Mission Valley groundwaters to a useable state, and has proposed an appropriate CAO to accomplish this end (Exhibit "A").
9. So as to not impact City water development plans for Mission Valley, significant progress on the MVT spill cleanup is required by 2005 and total clean-up is required by 2010.
10. Protection of Mission Valley groundwater is important to the City and the community, and the City is committed to taking all appropriate actions to make sure the groundwater spill is cleaned up as required by law.

We are hopeful that the RWQCB, representing the state, and the Working Group, representing the City, can cooperatively combine forces for the benefit of the community and our shared environment. Thank you for the opportunity to share this information with you.

Sincerely,


Richard Mendes
Deputy City Manager

cc: John Odermatt, RWQCB
Scott Kilkenny, V.P. Env., Health and Safety Dept., Kinder Morgan
Scott E. Martin, R.G., Levine-Fricke, Consultants for Kinder Morgan
Marc Greenberg, Esq., Attorney for Shell/Texaco/Equilon

PROPOSED TIME SCHEDULE ORDER

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

KINDER MORGAN ENERGY PARTNERS, LP o/p SFPP, LP,
POWERINE OIL COMPANY,
SANTA FE PACIFIC PIPELINE PARTNERS, LP, SHELL OIL COMPANY,
TEXACO REFINING AND MARKETING, INC., EQUILON ENTERPRISES LLC,
EXXONMOBIL OIL CORPORATION

MISSION VALLEY TERMINAL
9950 & 9966 SAN DIEGO MISSION ROAD
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (Regional Board) finds that:

1. Kinder Morgan Energy Partners, LP o/p SFPP (KM), LP Santa Fe Pacific Pipeline Partners, LP, Shell Oil Company, Texaco Refining and Marketing, Inc., Equilon Enterprises, LLC, ExxonMobil Corporation (collectively Dischargers) were required to clean up and abate the effects of an unauthorized discharge of petroleum hydrocarbon waste to soil and groundwater underlying the Mission Valley terminal bulk storage facility and off-site areas by January 1, 1999, pursuant to Cleanup and Abatement Order (CAO) No. 92-01, as amended in 1994 by Addendum No. 1.
2. The Dischargers failed to achieve full immobilization of dissolved phase petroleum as required by CAO No. 92-01 Directive No. 2.
3. The Dischargers' failure to comply with CAO No. 92-01 as amended constitutes a continuing violation of CAO No. 92-01.
4. As a result of the Dischargers' failure to comply with the CAO, extensive subsurface fuel contamination has spread off-site under Friar's Road, San Diego Mission Road, under the City-owned Qualcomm Stadium property, and beyond.
5. Consequently, it is now necessary to expedite off-site cleanup at the Mission Valley Terminal so that the groundwater resource development planned by the City of San Diego can be fully commissioned by September 1, 2007, which will be 15 years after the issuance of the first CAO.
6. Further, given the age of Qualcomm Stadium and ongoing discussions with the primary leaseholder, the City is currently planning to redevelop the Qualcomm Stadium Property and cannot freely do so until the extensive fuel contamination is remediated.

7. Current estimates of the volume of LNAPL range from 70,000 to 100,000 gallons of LNAPL. Thus, the remediation time estimates in the KM Summary Report (January 30, 2004) are highly uncertain.
8. Pursuant to the Opinion and Award issued by Judge Robert Altman in the Matter of the Arbitration Between SFPP/Kinder Morgan v. Texaco and Shell, the Court concluded that Kinder Morgan was the sole cause of the Core Plume, as described in that Opinion and Award, emanating from the MVT onto the Qualcomm Stadium property and beyond. Further, the Court concluded KM/SFPP was obligated to conduct all remediation of the soil and groundwater contamination, and to comply with all Regional Board orders relating to that remediation, at and under the Qualcomm property and beyond that to all locations the soil and groundwater contamination had spread. That Opinion and Award was confirmed on October 31, 2003, by the Los Angeles County Superior Court in the Judgment in *Texaco Refining and Marketing Inc., et al. v. SFPP LP, et al.*, Case Number BS083707.
9. No term or condition of CAO No. 92-01, as amended, is superceded by this Time Schedule Order. The terms and conditions of CAO No. 92-01 shall remain in full force and effect.
10. The issuance of this Time Schedule Order is an enforcement action taken by a regulatory agency and is exempt from certain provisions of the California Environmental Quality Act (CEQA) in accordance with section 15321, Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, that pursuant to sections 13267 and 13308 of the California Water Code, KINDER MORGAN ENERGY PARTNERS, LP o/p SFPP, LP, shall:

1. Immediately begin negotiating access rights to the Qualcomm Stadium Parking Lot with the City of San Diego such that KM can expeditiously conduct additional field work at the site.
2. Quantitatively map the spatial distribution of the LNAPL retained in off-site soils by September 1, 2004, so that the volume of LNAPL is known with greater confidence.
3. Immediately identify and investigate the potential for accumulation of gasoline vapors in subsurface utilities and within adjacent permeable fill materials in the City right-of-ways between Mission Valley Terminal and Qualcomm Stadium. The results of the investigation shall be provided by September 1, 2004. Should IDLH conditions (immediately dangerous to life or health) be identified during the investigation, KM shall immediately notify the City and RWQCB and implement corrective measures.

4. Re-commission and expand KM's air-sparging system and install a network of soil-vapor monitors by September 1, 2004 after discussions with the Board's own consultant, Dr. Paul Johnson, as to their location.
5. Install a barrier wall and appropriate on-site, up-gradient extraction wells at the MVT by January 1, 2005, to ensure that no further migration of LNAPL occurs from the Terminal itself.
6. Remediate groundwater impacted by fuel products in all offsite areas downgradient of the Mission Valley Terminal by September 1, 2007. Groundwater shall meet or exceed MCLs for fuel components, including but not limited to benzene and MTBE, by this date.
7. Undertake pilot testing of KM's soil-vapor extraction system to improve the effectiveness of the SVE wells in removing the LNAPL from the vadose zone of the contaminated off-site areas (e.g., to determine the number of pore volumes of air required to remove LNAPL without by-passing LNAPL in low-permeability zones, use of pneumatic injection wells to introduce additional air in the contaminated soil volume, etc.) and report on KM's findings by January 1, 2005.
8. Undertake pilot testing of one or more technologies of enhanced LNAPL recovery and bioremediation in the ground-water zone of the contaminated off-site areas and report on KM's findings by June 1, 2005.
9. Revise the existing groundwater fate and transport model by September 1, 2004 to include the effects of pumping from the City's proposed 2 mgd desalting project to determine the current and future potential range of influent MTBE concentrations. (The model is described in Levine-Fricke, Inc. Final Summary Report, TSO R9-2002-0042. Mission Valley Terminal, 9950 and 9966 San Diego Mission Road, San Diego, CA. January 30, 2004.)
10. Implement a system of enhanced LNAPL recovery and bioremediation in the ground-water zone by September 1, 2005, and demonstrate that observed concentrations of fuel products in off-site ground waters do not exceed MCLs by September 1, 2007. The monitoring wells of compliance with MCLs shall be R-9, R-10, R-11, R-12, R-42 (all wells), R-45 (all wells), R-21 (all wells), and R-30(all wells). Compliance shall be maintained and demonstrated for at least four monthly sampling events following September 2007.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Time Schedule Order adopted by the California Regional Water Quality Control Board, San Diego region, on __, ____, 2004.

JOHN H. ROBERTUS
Executive Officer